



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2015-1032]

RIN 1625-AA00

Safety Zone, Delaware River; New Castle, DE

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the waters encompassing Pea Patch Island Anchorage No. 5 and the upper portion of Reedy Point South Anchorage No. 3 to facilitate dredging in New Castle Range in the Delaware River. This regulation is necessary to provide for the safety of life on the navigable waters of the Delaware River in the vicinity of Pea Patch Island Anchorage No. 5 and Reedy Point South Anchorage No. 3. These closures are intended to restrict vessel anchoring to protect mariners from the hazards associated with ongoing pipe-laying and dredging operations.

DATES: This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through December 31, 2015. For purposes of enforcement, actual notice will be used from November 20, 2015 through [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2015-1032 in the “SEARCH” box and click

"SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Brennan Dougherty, U.S. Coast Guard, Sector Delaware Bay, Chief Waterways Management Division, Coast Guard; telephone (215) 271-4851, e-mail Brennan.P.Dougherty@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
E.O.	Executive order
FR	Federal Register
Pub. L.	Public Law
§	Section
U.S.C.	United States Code
COTP	Captain of the Port

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impractical given that the final details for the dredging operation were not received until November 12, 2015. Vessels attempting to enter the waters of either Pea Patch Island Anchorage No. 5 or the upper portion of Reedy Point South Anchorage No. 3 during pipe-laying or dredging operations may be at risk. Delaying this rule to wait for a notice and comment period to run would be contrary to the public interest as it would

inhibit the Coast Guard's ability to protect the public from the hazards associated with pipe-laying and dredging operations. We are issuing this rule, and, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the Federal Register because allowing this dredging and pipe laying operation to go forward without a safety zone in place would expose mariners and the public to unnecessary dangers.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231; 33 CFR 1.05-1 and 160.5; and Department of Homeland Security Delegation No. 0170.1. The Captain of the Port, Delaware Bay, has determined that potential hazards associated with dredging and pipe laying operations starting November 20, 2015, will be a safety concern for anyone attempting to transit in the Delaware River, along New Castle Range, in the vicinity of Pea Patch Island Anchorage No. 5, the upper portion of Reedy Point South Anchorage No. 3, and near the entrance to the C & D Canal. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while dredging is being conducted.

IV. Discussion of the Rule

The Coast Guard Captain of the Port is temporarily establishing a safety zone on the waters of Pea Patch Island Anchorage No. 5 and the upper portion of Reedy Point South Anchorage No. 3 from November 20, 2015 to December 31, 2015, unless cancelled earlier by the Captain of the Port. The safety zone will include all waters within the boundaries of Pea Patch Island Anchorage No. 5 and all waters within a portion of Reedy Point South Anchorage No. 3 north of a line drawn between positions 39°33'7.5"N, 75°33'2.0"W and 39°33'8.8"N, 75°32'31.8"W, as charted on NOAA chart 12311. The waters of the anchorages are described in

33 CFR 110.157. Entry into, transiting, or anchoring within the safety zone is prohibited unless vessels obtain permission from the Captain of the Port (COTP) or make satisfactory passing arrangements with the dredge ESSEX per this rule and the Rules of the Road (33 CFR chapter I, subchapter E).

The Captain of the Port will terminate the safety zone once all submerged pipeline has been recovered and dredging operations are complete. Notice of the implementation and the termination of the safety zone will be made per 33 CFR 165.7.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders (E.O.s) related to rulemaking. Below we summarize our analyses based on a number of these statutes and E.O.s, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

E.O.s 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a “significant regulatory action,” under E.O. 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, and duration of the safety zone. Although this regulation will restrict access to the regulated area, the effect of this rule will not be significant because Pea Patch Island Anchorage No. 5 and Reedy Point Anchorage No. 3 are not frequently used anchorages for vessels in the Delaware River, especially during the period of the closure, and there are a number of alternate anchorages

available for vessels to anchor. Furthermore, vessels may be permitted to transit through the safety zone with the permission of the Captain of the Port or upon making satisfactory passing arrangements with the dredge. Extensive notification of the safety zone to the maritime public will be made via maritime advisories allowing mariners to alter their plans accordingly.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory

Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under E.O. 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in E.O. 13132.

Also, this rule does not have tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal

agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone in force from November 20, 2015 to December 31, 2015, that prohibits entry of vessels in Pea Patch Island Anchorage No. 5 and the upper portion of Reed Point Anchorage No. 3. It is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add temporary § 165.T05-1032, to read as follows:

§ 165.T05-1032 Safety Zone, Delaware River; New Castle, DE

(a) **Location:** The safety zone will include all waters within the boundaries of Pea Patch Island Anchorage No. 5 (as defined in 33 CFR 110.157(a)(6)) and all waters within a portion of Reedy Point South Anchorage No. 3 (as defined in 33 CFR 110.157(a)(4)) north of a line drawn between positions 39°33'7.5"N, 75°33'2.0"W and 39°33'8.8"N, 75°32'31.8"W, as charted on NOAA chart 12311. These coordinates are based upon North American Datum 83 (NAD 83).

(b) Definitions.—(1) The Captain of the Port means the Commander of Sector Delaware Bay or any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port to act on his behalf.

(2) Designated representative means any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Delaware Bay, to assist in enforcing the safety zone described in paragraph (a) of this section.

(c) **Regulations:** The general safety zone regulations found in 33 CFR part 165 subpart C apply to the safety zone created by this section.

- (1) Entry into, transiting, or anchoring within the safety zone is prohibited unless vessels obtain permission from the Captain of the Port (COTP) or make satisfactory passing arrangements, via VHF-FM channel 16, with the dredge ESSEX per this rule and the Rules of the Road (33 CFR chapter I, subchapter E).
 - (2) To seek permission to transit the safety zone, the Captain of the Port's representative can be contact via VHF-FM channel 16.
 - (3) Vessels granted permission to transit the safety zone must do so in accordance with the directions provided by the Captain of the Port or his designated representative.
 - (4) No person or vessel may enter or remain in a safety zone without permission from the Captain of the Port;
 - (5) Each person and vessel in a safety zone shall obey any direction or order of the Captain of the Port or his designated representative.
 - (6) At least one side of the main navigational channel will be clear for safe passage of vessels in the vicinity of the safety zone. At no time will the main navigational channel be closed for vessel traffic. Vessels are advised to ensure safety passage by contacting the dredge ESSEX on VHF-FM channel 16 one hour prior to arrival.
 - (7) This section applies to all vessels wishing to transit through the safety zone except vessels that are engaged in the following operations: enforcing laws; servicing aids to navigation, and emergency response vessels.
- (d) Enforcement officials. The U.S. Coast Guard may be assisted by Federal, State, and local

agencies in the patrol and enforcement of the zone.

(e) Enforcement period. This rule will be enforced from November 20, 2015, to December 31, 2015, unless cancelled earlier by the Captain of the Port.

Dated: November 18, 2015

B. A. Cooper,

Captain, U.S. Coast Guard,

Captain of the Port Delaware Bay

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